AJ Ariffin, Yeo & Harpal (suing as a firm) v Dr Shaharuddin bin Dato' Haji Aziz

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R1–17–04 OF 2000
KC VOHRAH J
9 MAY 2000

Civil Procedure *— Costs — Application for — One month period from date of delivery of bill of costs to client expired — Whether leave necessary before action could be filed to recover costs — Legal Profession Act 1976 s 124(1)*

The applicants applied for leave of the High Court pursuant to s 124(1) of the Legal Profession Act 1976 to maintain in the Kuala Lumpur Sessions Court an extant civil action, or, in the alternative for leave to file a fresh civil action against the respondent for costs allegedly owed by the respondent when the applicants represented the respondent in two civil suits.

Held, dismissing the application:

The application for leave before the court under s 124(1) of the Legal Profession Act 1976 was unnecessary and misconceived. What it provided was that (except as authorized by the Legal Profession Act 1976) no advocate and solicitor shall commence or maintain any action for the recovery for any costs due to him from a person until he has delivered or posted to that person or left with him a bill of costs for business done for him *and after the expiration of one month from the date of such service of the bill of costs on him*. The bill that was sent must comply with the terms spelt out in latter part of sub-s (1). Leave, however, is needed if the advocate and solicitor chooses to commence or maintain any action before the expiry of the one month period which runs from the date of delivery or posting to the person or leaving him with the bill of costs for business done for him (see p 612E, G–H); *Kumar Japsal Quah & Aishah (suing as a firm) v Wembley Industries Holdings Bhd* [1998] 2 AMR 1288 not followed.

[Bahasa Malaysia summary

Pemohon-pemohon telah memohon kebenaran Mahkamah Tinggi menurut s 124(1) Akta Profesyen Undang-Undang 1976 untuk mengekalkan di Mahkamah Sesyen Kuala Lumpur satu tindakan sivil yang masih wujud, atau, secara alternatif kebenaran untuk memfailkan satu tindakan sivil yang baru terhadap responden untuk kos yang didakwa responden telah berhutang semasa pemohon-pemohon mengemukakan kedua-dua guaman sivil tersebut kepada responden.

Diputuskan, menolak permohonan tersebut:

Permohonan kebenaran daripada mahkamah di bawah s 124(1) Akta Profesyen Undang-Undang 1976 adalah tidak perlu dan disalah tanggap. Apa yang diperuntukkan adalah (kecuali seperti mana yang dibenarkan oleh Akta Profesyen Undang-Undang 1976) bahawa tiada peguambela dan peguamcara boleh memulakan atau mengekalkan apa-apa tindakan untuk mendapatkan apa-apa kos yang terhutang kepada beliau daripada sesiapa sehingga beliau telah menyerahkan atau mengirim melalui pos kepada orang tersebut atau telah menyerahkan kepada orang tersebut bil kos untuk perkhidmatan yang telah dilaksanakan untuk orang tersebut *dan setelah tamat tempoh satu bulan daripada tarikh bil kos tersebut diserahkan kepada beliau.* Bil yang diserahkan mesti memenuhi terma-terma yang dinyatakan dalam bahagian akhir sub-s (1). Kebenaran, bagaimanapun, adalah perlu jika peguambela dan peguamcara tersebut memilih untuk memula atau mengekalkan apa-apa tindakan sebelum tamat tempoh satu bulan tersebut yang bermula daripada tarikh serahan atau pos kepada orang tersebut atau penyerahkan bil kos untuk perkhidmatan yang telah dilaksanakan untuk beliau (lihat ms p 612E, G–H); *Kumar Japsal Quah & Aishah (suing as a firm) v Wembley Industries Holdings Bhd* [1998] 2 AMR 1288 tidak diikut.]

Notes

For cases on application for costs, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1191 and 1194.

Cases referred to

Kumar Japsal Quah & Aishah (suing as a firm) v Wembley Industries Holdings Bhd [1998] 2 AMR 1288 (not folld)

Legislation referred to

Legal Profession Act 1976 s 124(1)

AS Gill (AJ Ariffin Yeo & Harpal) for the applicant.

KC Vohrah J: In this ex parte application, the applicants are a firm of advocates and solicitors.

The advocates and solicitors applied for leave of the High Court to maintain in the Kuala Lumpur Sessions Court an extant civil action, or, in the alternative for leave to file a fresh civil action against the respondent for costs allegedly owed by the respondent when the applicants represented the respondent in two civil suits.

They applied for leave under s 124(1) of the Legal Profession Act 1976 which reads:

> Except as authorized by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any

> costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.

The affidavit supporting the application shows that the applicants had acted for the respondent in the Kuala Lumpur High Court in Civil Suits No S5–22–98–1998 and No S–22–116–98 in May 1998. The applicants were subsequently informed that the respondent had engaged new solicitors and the applicants then withdrew themselves from further representing him. The applicants then sent a bill of costs with a letter dated 30 January 1998 to the respondent requesting for settlement of the bill. The letter was sent on 2 December 1998.

The respondent failed to pay the bill and three months after the letter and the bill were posted to the respondent, the applicants filed an application in the Kuala Lumpur Sessions Court, Civil Action No 52–2991–99, to recover the amount stated in the bill of costs.

The applicants then filed this application before the High Court for leave.

In my view the application for leave before me under s 124(1) is unnecessary and misconceived.

It is unfortunate that s 124(1) comprises one long sentence, and as sometimes happens with long sentences, ambiguity is created in what the provision sets out to regulate.

The provision in sub-s (1) gives the impression that an advocate and solicitor must first obtain leave from the High Court before suing for the recovery of any costs due to him from a person for services rendered to him. A closer reading of the sentence, however, shows that that impression is unjustified. What it provides is that (except as authorized by the Legal Profession Act 1976) no advocate and solicitor shall commence or maintain any action for the recovery for any costs due to him from a person until he has delivered or posted to that person or left with him a bill of costs for business done for him *and after the expiration of one month from the date of such service of the bill of costs on him.* The bill that is sent must comply with the terms spelt out in latter part of the sub-s (1).

Leave, however, is needed if the advocate and solicitor chooses to commence or maintain any action before the expiry of the one month period which runs from the date of delivery or posting to the person or leaving him with the bill of costs for business done for him.

My attention has been drawn to *Kumar Japsal Quah & Aishah (suing as a firm) v Wembley Industries Holdings Berhad* [1998] 2 AMR 1288 but with respect I am unable to agree with the interpretation placed on s 124(1) by that case and I have to respectfully decline to follow it.

A I found at the hearing that the application before me, on the facts set out earlier in my decision, was unnecessary and misconceived and I therefore dismissed it.

Application dismissed.

B Reported by Ezatul Zuria Azhari

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